IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR

INCOME TAX APPEAL. No. 91 of 2002

COMMISSIONER OF INCOME TAX - II
V/S
LATE SHRI MANOHAR LAL SONI

Mr. K.K.BISSA, for the appellant/ petitioner

Mr. RAMIT MEHTA, for the respondent

Date of Order : 23.11.2007

HON'BLE SHRI N P GUPTA,J.
HON'BLE SHRI MUNISHWAR NATH BHANDARI,J.

ORDER

This appeal has been filed by the Revenue, against the judgement of Tribunal, dated 28.11.2001. This appeal was admitted vide order dated 09.12.2002, by framing the following substantial question of law:-

> "(i) Whether, on the facts and in the circumstances of the case the Tribunal was justified while interpreting the provisions of Section 158BB (1)(c) of the Act that credit of the income is to be given while computing undisclosed income even if no return is filed u/s 139(1) in the cases of below taxable income?"

The facts of the case are, that the assessment was made for block-period 1988-89 to 1999-2000, and that matter was carried up to the Tribunal, and the Tribunal, ultimately while deciding ground No. 8, relating to deletion of addition of Rs.1,57,467/-, held that the addition was deleted by the CIT Appeals holding that the

assessee was not having taxable income during the period, and was not under the obligation to file a return, and so merely on account of non-filing of the return of income, the assessee's income cannot be computed as undisclosed income, and this was found to have been so considered rightly.

It may be observed, that this is not in dispute that this amount of Rs.1,57,467/- represents the amount of income of the assessee during the relevant previous years, in which his income was below taxable limits, and for those period, the assessee was not under the obligation to file any type of income tax return.

It is contended by the learned counsel on behalf of the Revenue, on the basis of language of Section 158BB, that in the case of search and seizure, when the Block Assessment is to be made, income is to be computed in accordance with various provisions of Chapter IV, and no deduction can be allowed, with respect to the income, during the years, during which it was below taxable limits, and therefore, the order of the Tribunal, so also CIT Appeals, is required to be interfered with.

On the other hand, learned counsel for the assessee supported the impugned order, contending it to be in accordance with the provisions of Section 158BB.

We may gainfully quote the relevant parts of the Section 158BB, being Sub-section (1) and Clause (c) and

(ca) thereof, which read as under:-

> "158BB (1) The undisclosed income of the block period shall be the aggregate computed, [in accordance with the provisions of this Act, on the basis of evidence found as a result of search or requisition of books of account or other documents and such other materials or information as are available with the Assessing Officer and relatable to such evidence], as reduced by the aggregate of the total income, or as the case may be, as increased by the aggregate of the losses of such previous years, determined.,-
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> … … … … … … … …
>
> (c) Where the due date for filing a return of income has expired, but no return of income has been filed,-
> (A) On the basis of entries as recorded in the books of account and other document maintained in the normal course on or before the date of the search or requisition where such entries result in computation of loss of any previous year falling in the block period; or
>
> (B) On the basis of entries as recorded in the books of account and other documents maintained in the normal course on or before the date of the search or requisition where such income does not exceed the maximum amount not chargeable to tax for any previous year falling in the block period;
>
> (ca) where the due date for filing a return of income has expired, but no return of income has been filed, as nil, in cases not filing under clause (c);"

A bare reading of this Section shows, that according to the Sub-section (1), the undisclosed income of

the block period is to be taken to be aggregate of the total income of the previous years, falling within the block period, to be computed in accordance with provisions of the Act, on the basis of the material mentioned in this sub-section, but then, such aggregate amount is further subject to reduction, and increase, as provided in this sub-section (1) itself, inasmuch as, it is to be reduced by aggregate of total income, so also is to be increased by the aggregate of losses, of such previous years, determined according to various Clauses of this sub-section (1). Thus, the circumstances mentioned in Clause (c) and (ca), as the case may be, are required to be taken into account, for the purpose of increasing or reducing the aggregate of the total income, as arrived at. In this sequence, a look at Clause (c) shows, that it comprises of sub-clauses (A) and (B). Sub-clause (A) prescribes the procedure for computation of losses, for any previous years falling within the block period, while Clause (B) provides for computation of the income, falling within block period. Since it is not a case of computation of any losses, the relevant and applicable clause would be only sub-clause (B), which provides, that the income is to be computed on the basis of computation as recorded in the books of account and other documents maintained in the normal course on or before the date of the search or requisition, where such income does not exceed maximum amount not chargeable to tax for any previous year, falling within the block period.

In our view, this, unmistakably shows that where total income for any previous year falling within the block period, as arrived at on the basis of the books of account and other documents maintained in the normal course on or before the date of the search or requisition the documents, if it does not exceed the maximum amount not chargeable to tax, has to be reduced from out of the aggregate income of the block period, as arrived at under sub-section (1) in accordance with the provisions of the Act, on the basis of the documents. Our view is further fortified from bare reading of the Clause (ca), which provides, that where due date of filing of the return has expired, but no return of income has been filed, in cases not falling in Clause (c), income is to be taken as "nil". Obviously, meaning thereby, that in cases, where the total income for any previous years, falling within the block period, exceeds the maximum amount not chargeable to tax, and return has not been filed then the entire income is to be taken into account as aggregate income of the assessee during the relevant Block Period, and no deduction on that account is required to be made. Obviously, therefore, where it does not exceed, maximum amount not chargeable to tax, for any previous year falling within the block period, that income is required to be reduced from out of the aggregate income of the Block Period, arrived at in accordance with the provisions of Section 158BB, and it cannot be said, to be the undisclosed income even if no return is filed, within the time

prescribed under Section 139, as obviously, the assessee was not under the obligation to file any return.

Our view also finds support from the judgement of Madhya Pradesh High Court, in CIT Vs. Hasamdar Khatri, reported in 283 ITR page 346.

Accordingly, the question framed is answered in favour of the assessee, and against the Revenue. Resultantly, we find no force in the appeal, and the same is dismissed.

(MUNISHWAR NATH BHANDARI),J. (N P GUPTA),J.

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